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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,538	01/31/2001	Ian E. Abrahams	2-591.5	3241
4955 7590 02/05/2007 WARE FRESSOLA VAN DER SLUYS & ADOLPHSON, LLP BRADFORD GREEN, BUILDING 5 755 MAIN STREET, P O BOX 224 MONROE, CT 06468			EXAMINER CHOI, PETER H	
			ART UNIT 3623	PAPER NUMBER
			MAIL DATE 02/05/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 09/774,538	Applicant(s) ABRAHAMS ET AL.	
	Examiner Peter Choi	Art Unit 3623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-20.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

A. Michelle Tarae
C. Michelle Tarae
Primary Patent Examiner
Art Unit 3623

Continuation of 11. does NOT place the application in condition for allowance because: the Applicant's arguments are unpersuasive.

Applicant argues that it is not consistent for the Examiner to assert on the one hand that Mulholland teaches the claimed invention except in respect to the averaging, and then assert that the averaging is, by Official notice, of not patentable weight. The Applicant argues that if Mulholland actually disclosed the claimed invention, there would be some indication of some kind of averaging.

The Examiner respectfully disagrees. The Examiner notes that claims 1-20 were rejected using a 35 USC § 103 rejection (over Mulholland or Mulholland in view of Summerell et al.). Since the Examiner has not applied a 35 USC § 102 rejection using Mulholland, Mulholland need not disclose every aspect of the claimed invention. A 35 USC § 103 rejection (as was asserted by the Examiner) requires that a combination of prior art (Mulholland, Summerell et al., and Official Notice were used in the rejection of the claims) teaches every limitation of the claims. However, the Examiner has taken Official Notice for the limitations not explicitly taught by Mulholland that it is old and well known in the art to update/modify data based on newly gathered inputs (i.e., recalculating an average of data values after receiving additional data). If the Applicant wishes to challenge the takings of Official Notice, there are minimum requirements for a challenge to Official Notice:

(a) In general, a challenge, to be proper, must contain adequate information or arguments so that on its face it creates a reasonable doubt regarding the circumstances justifying the Official Notice

(b) Applicants must seasonably traverse (challenge) the taking of Official Notice as soon as practicable, meaning the next response following an Office Action. If an applicant fails to seasonably traverse the Official Notice during examination, his right to challenge the Official Notice is waived.

Applicant must provide adequate information or arguments so that on its face it creates a reasonable doubt regarding the circumstances justifying the Official Notice. Bald statements such as, "the Examiner has not provided proof that this element is well known" or "applicant disagrees with the Examiner's taking of Official Notice and hereby requests evidence in support thereof", are not adequate and do not shift the burden to the Examiner to provide evidence in support of the Official Notice.

Applicant argues that Mulholland does not teach a system including a risk processor that updates a body of risk information including quantitative risk information based on risk information in a particular project. Applicant argues that the Examiner's citation of a PC executing the HyperCard system and Excel spreadsheet package do not constitute a risk processor. Applicant also argues that the sensitivity analysis cited by the Examiner is distinguished from the claimed invention because it is purely hypothetical and not based on risk information in a particular project, and is for a particular project, not a body of risk information, and so cannot be said to result in the updating of a body of risk information.

The Examiner respectfully disagrees. The Examiner maintains the assertion that the use of computer software programs (such as HyperCard and Excel) inherently require the use of a computer processor (such as the Macintosh PC cited in Mulholland) for execution; thus, when the computer processor is used to execute HyperCard and Excel, the computer processor is used to process data (i.e., risk data) from the HyperCard and Excel systems, thereby making the computer processor a risk information processor (i.e., risk processor). The Examiner also notes that the claims, as currently written, do not preclude theoretical or hypothetical data transformations, such as that performed by a sensitivity analysis. The Examiner asserts that, even if a sensitivity analysis is performed to determine the effects of a "what-if" scenario, the analysis itself still results in a change (i.e., update) of information, as claimed. Thus, when a sensitivity analysis of risk information is performed using Excel, the sensitivity analysis and updating of said risk information is based on the collected risk information.

Applicant argues that Mulholland does not teach two data stores, one holding data for particular projects, and one holding an average of such data, as required by claims 1 and 11.

The Examiner notes (which has also been asserted by the Applicant) that claims 1 and 11 recite a knowledge base (for holding the generic risk records) and a data store of profiles (for holding the profile/actual project risk records). The Examiner asserts that the HyperCard knowledge base is a knowledge base for maintaining risk records, and that the HyperCard risk factor identification module, which contains information acquired from many experts and previous construction projects and then uses statistical techniques embedded in an Excel spreadsheet [page 12, column 1, lines 38-41] is another data store that holds an average of data (the Examiner had previously taken Official Notice that updating/modifying data based on newly gathered inputs, such as recalculating an average of data values, is old and well known in the art. The Examiner had also taken Official Notice that it is old and well known in the art to adopt an average value as a template (i.e., baseline) value to estimate the tendency of a population value). The Examiner asserts that the Excel spreadsheet is capable of performing statistical techniques, such as calculations of an average value of data, which are then stored in the Hypercard knowledge base. Thus, the Examiner asserts that Mulholland, in view of previously asserted Official Notice, teaches the limitations of the claim.